SECTION 184 INDIAN HOUSING LOAN GUARANTEE PROGRAM

Processing Guidelines 2014

Chapter 11: Refinances

11.1 Overview

The Section 184 program offers three types of refinances: (1) No Cash out refinances; (2) Cash-out refinances; and (3) Streamline refinances.

Borrowers refinancing their mortgage loans are required to pay the same loan guarantee fee that is required of new acquisitions. The loan guarantee fee is non-refundable and may be financed or paid in cash at closing. The borrower will not receive credit for the fee from the loan that is being paid off.

Unless otherwise specified below, the underwriter evaluating a refinance loan is to assess the applicant's ability and willingness to repay the mortgage debt using the same standards as they would if the loan type was an acquisition. In addition, the underwriter must verify and show evidence that the borrower is eligible for the program (this includes streamline refinances). For a more detailed analysis for the requirements of assessing a loan applicant see the Section 184 Loan Processing and Underwriting Guidelines (Chapter 5 of the guidebook).

With both no cash out and cash out refinance transactions, a new appraisal is always required.

With both no cash out and streamline refinance transactions, borrowers are generally not permitted to receive cash back as part of the transaction. However, the tolerance for this policy is that the borrower may not receive cash back in excess of $500.

11.2 Tribal Trust Land Documentation

The following items are required in addition to all other standard Section 184 documentation and to be included in the underwriting package for all refinance loan types located on tribal trust land.

Lease- Borrowers are required to have a lease that has been approved and executed by OLG, the Tribe, and the Bureau of Indian Affairs (BIA). The executed lease is to show as recorded in the certified title status report either prior to or when recording the mortgage. For a newly executed lease, the required term of the lease is a minimum of 50 years or that the remaining years on the lease must exceed the term of the mortgage by 10 years.

Certified Title Status Report- The lender is required to obtain a certified title status report (TSR) from the Bureau of Indian Affairs. The certified TSR should include the recorded mortgage and the existing lease, if applicable. The certified TSR cannot be older than 1 year at the date of loan submission for tribal trust or individual allotted trust with an executed lease. For individual trust land without a lease the TSR cannot be older than 6 months at the date of loan submission.

BIA approval of the mortgage is required for allotted trust land without a lease. Mortgages on allotted/individual trust without a lease must be submitted to the BIA for underwriting and approval to mortgage. The BIA approval is required prior to loan closing.

11.3 No Cash-Out Refinance

Mortgages must have a payment history of more than 6 months to be eligible for this type of refinance. Borrowers must credit qualify to be eligible for this type of transaction.

Lenders are required to use the 184 No Cash-Out Refinance Mortgage Credit Analysis Worksheet (MCAW) to determine the maximum mortgage amount.

Maximum Loan Amount- The maximum allowable mortgage amount for a no-cash out credit qualifying refinance is the ***lesser of***:

1. The existing debt: the sum of the mortgage payoff, interest, seasoned subordinate liens, closing costs, prepaid expenses, reasonable discount points, and borrower paid repairs required by the appraisal**;**

2. 97.75% of the appraised value of the property (or 98.75 percent if the value of the property is $50,000 or less); or

3. The Section 184 county and state loan limits in effect the date the case was issued.

Unallowable financed fees- late fees, escrow shortage, and prepayment penalties.

a. Acceptable Payment History- The lender is required to document an acceptable payment history reflecting current payment status and the borrower has made all payments on the mortgage on the current mortgage within the month due for the previous 12 months (or the maximum amount of time the mortgage has been in place).

b. New Construction Completed Prior to Closing- A construction payoff statement including accrued interest, the origination date of construction (interim financing) loan, the HUD Settlement Statement showing original loan amount and all costs to construct are required documents on all new construction loans that refinance transactions.

In addition, the following documentation is required:

1. Termite treatment (if state required);

2. Builder's Certification (HUD 92541);
3. A 1 year warranty (HUD 92544);
4. Health authority approval on well and septic; if applicable;
5. Flood Certificate.
6. One of the following: A 10 year warranty**;** a minimum of 3 inspections by a fee inspector; or a building permit (or the equivalent and certificate of occupancy (or the equivalent).

c. Removal of Mortgagor- A no cash-out refinance may be used to buy out the equity of a co-owner or spouse. The specified equity to be paid is considered property-related indebtedness and is eligible for inclusion in calculating the new mortgage. A divorce decree, settlement agreement, or other bona fide equity agreement is required to be provided to document the equity to be paid to the co-owner or ex-spouse.

d. Subordinate Liens- Subordinate liens, including lines of credit, regardless of when taken, may remain outstanding provided the combined loan to value does not exceed the appraised value. The combined loan-to-value (CLTV) ratio of all liens cannot exceed 100 percent of the appraised value of the property. The lender must use the maximum approved credit limit of the existing subordinate lien to calculate the CLTV ratio.

- Subordinate liens that will be paid in full are required to meet 12 month seasoning requirement.
- Subordinate liens less than one year old (from the date of loan application), including equity lines of credit, may be included if the borrower provides conclusive evidence (e.g. canceled checks and paid invoices) that the proceeds were used for the repair or rehabilitation of the subject property; Eligible improvement are referenced in Chapter 7.5.
- If any portion of a line of credit in excess of $1,000 was advanced within the past twelve (12) months and was for the purpose other than repairs and rehabilitation of the subject property, the line of credit is not eligible for inclusion in the new mortgage.

11.3 Cash-Out Refinance

In order to be eligible for a cash out refinance, the property must have been owned by the borrower as his/her principal residence for 12 months or more preceding the date of the loan application.

Lenders are required to use the 184 Cash-Out Refinance Mortgage Credit Analysis Worksheet (MCAW) to determine the maximum mortgage amount.

Maximum Loan Amount- The maximum allowable mortgage amount for a cash out refinance is 85% of the appraised value of the subject property.

a. **Mutual Help Purchases-** Borrowers purchasing a Mutual Help home may apply for cash out refinance to pay off their existing debt and obtain cash-out. Lender is required to obtain a payment history and payoff statement from the Tribe and/or the housing authority.

b. **Non Occupant Co Borrowers-** Non occupant co-borrowers may not be added to a cash-out refinance transaction in order to meet 184's credit underwriting guidelines requirements for the mortgage. Any co-borrower or cosigner being added to the note is required to be an occupant of the property.

c. **Payments to Creditors-** All payments to third party creditors are required to be paid in full and the account closed. This must be documented on the HUD Settlement Statement.

d. **Maximum Cash to Borrower-** Refinances that include a *cash distribution* directly to the borrower are limited to $25,000.

e. **Cash-Out Letter-** The underwriting file package is required to include a detailed executed statement from the borrower describing how the funds are to be utilized.

f. **Subordinate Liens-** Existing subordinate financing may remain in place provided the CLTV does not exceed 85% of the appraised value. The lender must use the maximum approved credit limit of the existing subordinate lien to calculate the CLTV ratio.

g. **Repairs to the subject property-** If the appraisal report was completed subject to repairs, the lender is required to establish either a single close construction escrow account (for repairs of $10,000 or greater) or escrow holdback at 1.5 times of the accepted bid. Upon completion of repairs and receipt of the final inspection, any unused funds may be disbursed to the borrower.

h. **Closing Cost Assistance Liens-** Lender is required to obtain the original HUD Settlement Statement for the existing mortgage to verify if closing cost/down payment assistance was provided. Tribal approval, prior to closing, is required to be obtained when tribal or Native American Housing Assistance and Self Determination Act funds were provided for the loan that is being paid off with the refinance.

i. **Properties Owned Free & Clear-** Properties owned free and clear are eligible for cash out refinance.

j. **Credit Standards.** Cash out refinances historically have a higher risk and therefore must not just meet the traditional underwriting criteria found in the Section 184 Loan Processing and Underwriting Guidelines (Chapter 5 of the guidebook), but these additional requirements:
   - No late payments in the past 24 months on all open accounts
   - No late payments in the past 36 months on all mortgage accounts
   - No bankruptcy, judgment, or liens in the past 48 months
   - No accounts converted to collection in the past 24 months
   - All accounts that were delinquent and/or in collection and are being paid through a repayment agreement are required to include an executed repayment agreement between the creditor and the borrower and a 12 month payment history under the repayment agreement

11.4 Streamline Refinance Transactions (184 to 184)

Streamline refinances are limited to loans currently guaranteed through the Section 184 program. The streamline refinance will typically lower the borrower's monthly payment or reduce the term of the mortgage. The existing 184 mortgage must be endorsed and is required to show a twelve month acceptable payment history and is required to be current at the time of the loan application.

Lenders are required to use the 184 Streamline Mortgage Credit Analysis Worksheet (MCAW) to determine the maximum mortgage amount. The sections of the MCAW related to income, assets, debts, and other obligations do not generally require completion (unless you are deleting a borrower).

Evidence of Existing Section 184 Mortgage- The lender is required to indicate on the case number request form, HUD form 50131, that the refinance is a streamline refinance.

Payment History- The lender is required to verify and document the payment history on the existing mortgage. The borrower cannot have been late in making a mortgage payment in the last 12 months.

Verification of Employment- The lender is required to include a signed and dated verification of employment (written or verbal).

MAXIMUM LOAN AMOUNT FOR STREAMLINE REFINANCE

WITH AN APPRAISAL, THE LESSER OF:	WITHOUT AN APPRAISAL, THE LESSER OF:
The sum of the existing mortgage payoff amount, interest, closing costs, prepaid expenses and reasonable discount points	**The outstanding principal balance of the original Section 184 loan (including accrued interest-see note below)**
Appraised value times 97.75% (or 98.75% if the value of the property is $50,000 or less)	**The original principal balance of the existing Section 184 mortgage**

NOTE: Streamline refinance transactions are exempt from the county and state loan limits that are currently in place. The rule is that the maximum loan amount for the new mortgage cannot exceed the original principal balance of the existing Section 184 mortgage.

NOTE: The outstanding principal balance may include interest charged by the servicing lender when the payoff is not received on the first day of the month, but may not include delinquent interest, late charges, or escrow shortages.

Appraisal- When the proposed mortgage amount (payoff, closing costs and prepaid expenses) exceeds the outstanding principal balance of the original Section 184 loan a borrower may use an appraisal to justify the higher loan amount.

NOTE: The increased loan amount cannot exceed the Section 184 loan limits effective the date the case number was issued. The appraised value can be used to substantiate the higher loan amount for loans that are 12 months old or greater. If the appraised value is such that it is not beneficial to the applicant, the underwriter may choose to proceed as if no appraisal were done. The appraisal may be voided and the file documented in the “remarks” section of MCAW. The maximum loan amount will remain the outstanding principal balance of the original Section 184 loan and the borrower will pay all additional amounts at closing.

Adding or Deleting a Borrower- A borrower may be added to the note when refinancing an existing 184 guaranteed loan. Additionally, a borrower may be deleted from a Section 184 mortgage. However, when deleting a borrower from a Section 184 mortgage, the remaining occupying borrower is required to meet 184 Program eligibility (be an enrolled member of a federally recognized tribe), comply with all federal and tribal leasing requirements, and qualify under Section 184 credit standards found in the Loan Processing and Underwriting Guidelines (Chapter 5 of the guidebook). This specifically includes verifying that the remaining borrower will be able to support the mortgage within the appropriate qualifying ratios.

Subordinate Liens- Subordinate liens, including lines of credit, regardless of when taken, may remain outstanding provided the CLTV does not exceed the appraised value. The lender must use the maximum approved credit limit of the existing subordinate lien to calculate the CLTV ratio.

Net Tangible Benefit- The lender is required to determine that there is a net tangible benefit as a result of the streamline refinance transaction (with or without an appraisal). Net tangible benefit is defined as either:

- A reduction of at least 5% in the mortgage payment (principal and interest); or
- A reduction in the term of the mortgage provided the payment increase is less than 15%

Uniform Residential Loan Application (URLA)- Lenders are required to use the standard FNMA form 1003 (Uniform Residential Loan Application) and form HUD 50111 (Section 184 Addendum to the Loan Application) for all streamline refinance transactions.

Cash-to-Close- If the borrower needs less than $1,000 in cash to close, documentation of the funds is not required.